

Mediation as a Mean of International Commercial Dispute Resolution

Abstract

The subject of this dissertation is the topic of mediation in solving international commercial disputes. At the outset, the author focuses on the general theory of dispute and argues that the main psychological features of thinking about conflicts are inherent in virtually all types of social relations, regardless of their specific nature. It is therefore useful to recall the knowledge about the psychology of conflict in the context of research on the resolution of international commercial disputes, as this initial line of reasoning is also present. In the first part of the dissertation, the author defines the position of mediation within the spectrum of the dispute resolution and identifies its relationship with other ADR methods. She is particularly concerned with the recent change in the ADR area, particularly as regards the shift of arbitration towards judicial proceedings and convergence of mediation with arbitration in certain respects. Furthermore, the author considers the importance of mediation for international commerce, noting in particular the aspect of the institutionalisation of mediation and touches on the phenomenon of regional change in international trade. The author points out that the cross-border commercial relations are increasingly involving entities from countries that are culturally inclined to consensual conflict resolution methods. She notes that, in spite of this, in the area of commercial disputes, mediation may be encountered rather than as a stand-alone process, with its incorporation into one of the so-called hybrid processes. The author also deals with mediation and private international law. In the second part of the dissertation through, the analytical and comparative methods topical issues related to cross-border mediation in practice are identified. First of all, it is argued by criticism of the current state of international arbitration, whose key attributes, such as decision-making speed and lower costs, are getting weaker and thus de facto becomes a quasi-judicial procedure. It is pointed out that the factors of money and the length of the duration of the proceedings are still decisive in the choice of the appropriate method of conflict resolution for the parties to the commercial disputes. In support of these claims, the author draws from the research that has been conducted among stake-holders for UNCITRAL.

The analysis of the current state of mediation in the United States and the United Kingdom demonstrates that the absence of finality in mediation decisions and a single mechanism for the enforcement of agreements resulting from mediation, respectively, is a major obstacle to the further development of mediation in international commercial practice. On the one hand, there is a clear social interest in quick, simple and consensual resolution of disputes, on the other hand, in some countries we face an increase of mediation related disputes, especially when it comes to voluntary performance, resp. failure to comply with obligations under the mediation agreement. Several recent legislative initiatives are responding to the situation, and the most ambitious is the UN Convention on International Agreements resulting from Mediation, or the Singapore Mediation Convention. Finally, the author presents the main provisions of the proposal to be presented at the Diplomatic Conference in Singapore in August 2019.

Keywords: International mediation - international trade - agreements resulting from mediation - - MED-ARB - voluntary fulfillment of mediation agreements - - UNCITRAL – Singapore Convention